APPENDIX A

(Portions of Revised Title 28, U. S. Code)

Section 1338: Patents, Copyrights, Trade-marks, and Unfair Competition.

"(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent and copyright cases."

Section 1391: Venue Generally.

"(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judical district where all plaintiffs or all defendants reside.

"(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial dictrict where all defendants reside, except as otherwise provided by law.

"(c) A corporation may be sued in any judicial district in which is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

"(d) An alien may be sued in any district. June 25, 1948, c. 646, 62 Stat. 935."

Section 1400: Patents and Copyrights.

"(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights may be instituted in the district in which the defendant or his agent resides or may be found.

"(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business. June 25, 1948, c. 646, 62 Stat. 936."

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Argued April 12, 1956 Decided May 14, 1956

No. 315—October Term, 1955.

Docket No. 23836

TRANSMIRRA PRODUCTS CORP. and ROBERT ARONSTEIN,
Plaintiffs-Appellants,

v.

FOURCO GLASS CO.,
Defendant-Appellee.

Before:

CLARK, *Chief Judge,* and HINCKS and LUMBARD,
Circuit Judges.

Appeal from the United States District Court for the Southern District of New York, Archie O. Dawson, *Judge.*

Transmirra Products Corp. and Robert Aronstein appeal from the dismissal for lack of venue of their action for patent infringement upon motion of defendant, Fourco Glass Co., D. C. S. D. N. Y., 133 F. Supp. 531. Reversed and remanded.

STANLEY N. OHLBAUM, New York City (Aronstein & Aronstein, Robert Aronstein, and William B. Aronstein, New York City, on the brief), *for plaintiffs-appellants.*

VERNON H. DOANE, Washington, D. C. (Robert E. Burns, New York City, and Edward S. Irons, James P. Burns, and Charles B. Johnson, Washington, D. C., on the brief), *for defendant-appellee.*

CLARK, *Chief Judge:*

Plaintiffs appeal from the dismissal, for want of venue in the court below, of their action for patent infringement brought against a West Virginia corporation. In granting the defendant's motion to dismiss, Judge Dawson ruled that plaintiffs had shown no acts of infringement committed by the defendant in the Southern District of New York, although he did point out that it maintains a sales office in the district and by the regular and continuous course of activity there may be said to have a regular and established place of business therein. D. C. S. D. N. Y., 133 F. Supp. 531. Since, disagreeing with the judge's interpretation of the governing legislation, we hold that the defendant "resided" in the district within the applicable statutory definition of venue, we shall not consider his ruling with respect to the absence of local acts of infringement.

The governing statutes here, found in Chapter 87 of Title 28 U. S. Code entitled, "District Courts; Venue," are the ones dealing with "Venue generally" and with "Patents and copyrights." From the first we have the provision:

> "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes." 28 U. S. C. § 1391(c).

And from the second we have the following:

> "Any civil action for patent infringement may be brought in the judicial district where the defendant

resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U. S. C. § 1400(b).

As was held with respect to earlier legislation, the second provision should control here. *Stonite Products Co.* v. *Melvin Lloyd Co.*, 315 U. S. 561. Even so, that requires but the insertion in it of the definition of corporate residence from the first provision[1]—just as that definition is properly to be incorporated into other sections of the venue chapter, *e.g.*, §§ 1392, 1393, 1395, 1396, 1397, 1400, etc.[2] Hence the plain meaning of the two statutes, when read together, would be that this defendant may be sued in New York, where it "is doing business."

Such, we think, is the proper interpretation of the legislative mandate, fortified, indeed, upon consideration of the background and general purpose of the 1948 statutory revision. But there has arisen a serious difference of opinion, many eminent judges reading the statutes as intending no change in the former law, wherein the corporation was an "inhabitant" only of its state of incorporation. Able exponents of this view are Chief Judge Phillips in *Ruth* v. *Eagle-Picher Co.*, 10 Cir., 225 F. 2d 572, with Judge Huxman dissenting, and Chief Judge Major in *C-O-Two Fire Equipment Co.* v. *Barnes*, 7 Cir., 194 F. 2d 410, with Judge Lindley

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[1] As the Reviser's Note to § 1400(b) indeed suggests, in pointing out the identity of "'resident" with "inhabitant" of the former law and making a specific cross-reference to the like explanation in the Note to § 1391.

[2] See discussion in the Note cited in the text *infra*, 56 Col. L. Rev. 394, 412, 413 (1956), also analyzing acutely other special venue provisions, including that of the Jones Act, 46 U. S. C. § 688, permitting suits in the district in which the defendant employer resides or in which his principal office is located. "Since the doing business test of section 1391(c) defines residence, can it be applied here when to do so would make superfluous the last clause of the special provision? The decisions are uniform in holding that it can." 56 Col. L. Rev. 394, 413 (1956), citing cases.

dissenting, affirmed by an equally divided court, *Cardox Corp.* v. *C-O-Two Fire Equipment Co.*, 344 U. S. 861; see also *Ackerman* v. *Hook*, 3 Cir., 183 F. 2d 11. Opposed and expressing the view with which we agree are *Dalton* v. *Shakespeare Co.*, 5 Cir., 196 F. 2d 469, and *Guiberson Corp.* v. *Garrett Oil Tools*, 5 Cir., 205 F. 2d 660, certiorari denied 346 U. S. 886,[3] as well as the text writers in general. See Note, *Doing Business as a Test of Venue and Jurisdiction over Foreign Corporations in the Federal Courts*, 56 Col. L. Rev. 394, 413-416 (1956); 47 Nw. L. Rev. 699-705 (1952); 21 Geo. Wash. L. Rev. 610 (1953); Seidel, *Venue in Patent Litigation*, 22 Geo. Wash. L. Rev. 682, 697 (1954); 3 Moore's Federal Practice 2139, 2140 (2d Ed. 1948); Moore's Commentary on the U. S. Judicial Code 178, 179, 184, 185 (1949).

The stated reason chiefly relied on for the judicial conservatism thus displayed, namely, that the revision of Title 28 was often declared by those participating to be in the main declaratory only, without change of substance, can properly apply only where there was not change of substance; correctly understood in the light of the background of the revision, it here actually cuts the other way. For, as is well understood, an editorial staff from two law pub-

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[3] The cases cited do not exhaust the judicial precedents, for there are several district court decisions also divided. Compare, e.g., *Farr Co.* v. *Gratiot*, D. C. S. D. Cal., 92 F. Supp. 320, per Hall, *J.*, for the construction stated in the text, and *Pierce* v. *Perlite Aggregates, Inc.*, D. C. N. D. Cal., 110 F. Supp. 684, per Lemmon, *J.*, opposed. The case of *Gulf Research & Development Co.* v. *Schlumberger Well Surveying Corp.*, D. C. S. D. Cal., 92 F. Supp. 16, per Harrison, *J.*, also opposed, had a checkered career, as its transfer to Delaware, D. C. S. D. Cal., 10 F. R. D. 353, was unsuccessfully opposed by mandamus—a remedy refused because of lack of extraordinary circumstances. *Gulf Research & Development Co.* v. *Harrison*, 9 Cir., 185 F. 2d 457; *Gulf Research & Development Co.* v. *Schlumberger Well Surveying Corp.*, D. C. Del., 98 F. Supp. 198, per Leahy, *J.*; *Gulf Research & Development Co.* v. *Leahy*, 3 Cir., 193 F. 2d 302, affirmed by an equally divided court, 344 U. S. 861.

lishing firms did the initial task of revision for the legislative committee and naturally limited its work to revision proper. But, as also well understood, various suggestions coming from the staff or special consultants or scholars were adopted and, where occurring, made sharp breaks with the past. This is developed with extraordinarily complete documentation by Chief Justice Vinson in a case so analogous as to be authoritative here. *Ex parte Collett*, 337 U. S. 55, 61-71, 10 A. L. R. 2d 921, upholding the general applicability of another provision of this Venue chapter, 28 U. S. C. § 1404(a), providing for a change of venue for the convenience of parties and witnesses. In fact the same idea is expressly stated or conceded, under the rubric, applying to situations "which would not yield to codification," of "a few such changes, substantive in nature." by Chief Reviser Barron, in his quoted article, *The Judicial Code: 1948 Revision*, 8 F. R. D. 439, 441.[4] Among such important changes, that making corporations suable where they do business is of course outstanding.

The rationale of this sharp break with ancient formulae is quite obviously a response to a general conviction that it was "intolerable if the traditional concepts of 'residence' and 'presence' kept a corporation from being sued wherever it was creating liabilities." See the Note cited *supra*, 56 Col. L. Rev. 394, at 395 (1956). As this authority points

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[4] Cited and quoted in *Ruth* v. *Eagle-Picher Co.*, 10 Cir., 225 F. 2d 572, though *Ex parte Collett*, 337 U. S. 55, 10 A. L. R. 2d 921, is not. The *Ruth* case also quotes similar generalities from Professor Moore, apparently overlooking his specific views adverse to that decision, as noted in, *e.g.*, 56 Col. L. Rev. 394, at 414, and cited in the text. Unfortunate consequences of too restricted a construction of the new revision have also appeared elsewhere. See *Telechron, Inc.* v. *Parissi*, 2 Cir., 197 F. 2d 757, 761, overruling the narrow construction of *Kleinman* v. *Betty Dain Creations*, 2 Cir., 189 F. 2d 546, of the "pendent jurisdiction" provisions of 28 U. S. C. § 1338(a) with respect to claims of unfair competition; and see also Note, *Curtailing the Scope of 1404-A—Round Two*, 60 Yale L. J. 183-188.

out, the particular attack on the problem here is in terms of venue, with which is allied the issue of personal jurisdiction over corporations.[5] But, as we know, the ramifications are yet more general; for there have long been debated proposals to substitute for the famous fiction making a corporation a citizen or inhabitant of the perhaps remote state of its incorporation the more realistic test for substantive jurisdiction itself of the place or places of corporate activity or doing business. See *Frankfurter, J.*, in *Lumbermen's Mutual Casualty Co.* v. *Elbert*, 348 U. S. 48, 56, discussing, *inter alia*, the proposals of that distinguished lawyer and statesman, the late Attorney General Mitchell; and see in detail, McGovney, *A Supreme Court Fiction*, 56 Harv. L. Rev. 853, 1090, 1225, 1231-1238, 1251, 1252 (1943). So extensive has been the dispute, so voluminous the literature, that even partial steps to correct what has been so thoroughly and exhaustively condemned as unjust would seem deserving of support. No reason appears, therefore, why we should strain to discover unexpressed exceptions to this beneficial principle, which could so easily have been expressed, had they been intended.[6]

Moreover, recognition of such exceptions is unreasonable, since all the grounds supporting the general rule appear fully as applicable to all the special cases, including patent infringement.[7] And it presents a really acute problem as to how far such special exceptions should themselves

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[5] The suggestion found, as in *Ruth* v. *Eagle-Picher Co.*, 10 Cir., 225 F. 2d 572, that § 1391(c) but writes into the venue section the effect of *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U. S. 165, 128 A. L. R. 1437, as to waiver of venue is obviously inadequate as an explanation; the change is perfectly consistent with the *Neirbo* decision, but goes much beyond it.

[6] Note that in the earlier subdivisions of § 1391, viz., (a) and (b), specific exceptions are made for other provisions of the law.

[7] However exclusive it may be, the patent jurisdiction statute itself, § 1400(b), did bring in a new concept making the place of the wrong important. See *Stonite Products Co.* v. *Melvin Lloyd Co.*, 315 U. S. 561. This hardly suggests special privileges for patent infringers.

be extended. It does seem odd drafting, to say the least, to add after a general and unlimited defining statute a series of eight or ten exceptions—all unexpressed as such, but each destroying the generality of the first provision. For precisely the same problem can be raised—even though this does not seem to have been generally perceived—as to the series of special venue statutes in this chapter, as well as those elsewhere stated, such as seamen's suits under the Jones Act.[8] It hardly seems possible—and the cases do not support the view—that Congress intended any such inroad on its general principle as to take out all these situations; nor is there any ground for distinguishing between, *e.g.*, claims for patent infringement, for unfair competition, or for violation of the antitrust laws, which might properly come up in a single suit and be conveniently disposed of together. We conclude with the text writers that the general definition of corporate residence applies here also.

We should notice a final argument occasionally made, that the construction supported by plaintiffs will render the second alternative of § 1400(b) of no practical utility. Having in mind the manner in which the new Code was prepared, as stated above, it seems doubtful if any deduction of importance is to be drawn from the mere circumstance of continuance of provisions useful in the earlier legislation, 28 U. S. C. former § 109; and no such deduction has been made with reference to the provision for venue of cases under the Jones Act, as we have seen.[9] But it is quite clear that this alternative provision does have a sphere of decided usefulness in litigation against non-corporate defendants, and some provision of this nature was imperative. 56 Col. L. Rev. 394, 415 (1956).[10]

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[8] As explained in footnote 2 *supra*.

[9] See footnotes 2 and 8 accompanying text *supra*.

[10] Even for corporate defendants, the two provisions are not identical; and "having a regular and established place of business" may not always be synonymous or coextensive with "doing business."

Because its literal wording thus coincides with the legislative purpose, viewed in historical perspective, to support a patent infringement suit where the venue is laid in the federal district in which the corporate defendant is doing business, the judgment below must be reversed and the action remanded for further proceedings not inconsistent with this opinion.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

July 18, 1955

No. 5072

JOSEPH P. RUTH, sometimes also known as J. P. Ruth, *Appellant*,

v.

THE EAGLE-PICHER COMPANY, a corporation, *Appellee*.

Before PHILLIPS, *Chief Judge*, and HUXMAN and PICKETT, *Circuit Judges*.

PHILLIPS, *Chief Judge*.

This is an action for patent infringement brought by Ruth against the Eagle-Picher Company in the District of Colorado. Eagle-Picher imposed a motion to dismiss on the ground that while it is authorized to do business in the State of Colorado, it is a corporation organized under the laws of Ohio and had committed no acts of patent infringement within the District of Colorado. The trial court sustained the motion. Ruth has appealed.

28 U.S.C.A. § 109, prior to the 1948 revision of the Judicial Code, Act of June 25, 1948, 62 Stat. 869, in part read as follows:

> "In suits brought for the infringement of letters patent the district courts of the United States shall

have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. * * *"

In the 1948 revision, § 1400(b) of Title 28 U.S.C.A. reads as follows:

"(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business."

28 U.S.C.A. §§ 112 and 113, before the 1948 revision of the Judicial Code, in part read as follows:

"§ 112. * * * except as provided in sections 113 to 118 of this title, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; * * *"

"§ 113. When a State contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. * * *"

In the 1948 revision § 1391 (b, c) of Title 28 U.S.C.A. reads as follows:

"(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be

brought only in the judicial district where all defendants reside, except as otherwise provided by law.

"(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

In the 1948 revision, § 1392(a) of Title 28 U.S.C.A. reads as follows:

"(a) Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be brought in any of such districts."

In Stonite Products Co. v. Melvin Lloyd Co., 315 U.S. 561, 62 S. Ct. 780, 781, 86 L. Ed. 1026, the question presented was whether 28 U.S.C.A. § 109 was the sole provision governing venue of patent infringement cases, or whether that section was supplemented by 28 U.S.C.A. § 113. The court held that 28 U.S.C.A. § 109 was the exclusive provision controlling venue in patent infringement cases.[1]

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[1] In its opinion the court said:

"We hold that Section 48 is the exclusive provision controlling venue in patent infringement proceedings.

"Section 48 is derived from the Act of March 3, 1897, c. 395, 29 Stat. 695, and its scope can best be determined from an examination of the reasons for its enactment.

"Section 11 of the Judiciary Act of September 24, 1789, c. 20, 1 Stat. 79, permitted civil suits to be brought in the federal courts against a person only in the district of which he was an inhabitant or in which he was found at the time of serving the writ. That section applied to suits for patent infringement. Chaffee v. Hayward, 20 How. 208, 216, 15 L. Ed. 804, 851; Allen v. Blunt, Fed. Cas. No. 215, 1 Blatchf. 480. The act of March 3, 1875, c. 137, 18 Stat. 470, retained the provision allowing suit wherever the defendant could be found. The abuses engendered by this extensive venue prompted

The question here presented is whether § 1400 is the sole provision governing patent infringement cases, or whether it is supplemented by § 1391(c).

(1) it has been often stated that where there are two statutes upon the same subject, one being special and the other general, the presumption is, in absence of an express repeal, or an absolute incompatibility, that the special

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the Act of March 3, 1887, c. 373, 24 Stat. 552, which, as amended by the Act of August 13, 1888, c. 866, 25 Stat. 433, permitted civil suits to be instituted only in the district of which the defendant was an inhabitant, except that in diversity jurisdiction cases suit could be started in the district of the plaintiff's or the defendant's residence. The substance of those provisions was reenacted as Section 51 of the Judicial Code (28 U.S.C. § 112, 28 U.S.C.A. § 112).

"'After the holding of In re Hohorst, 150 U.S. 653, 14 S. Ct. 221, 225, 37 L. Ed. 1211, that the Act of 1887 as amended did not apply to a suit against an alien or a foreign corporation, 'especially in a suit for the infringement of a patent right,' the lower federal courts became uncertain as to the applicability of the Act of 1887 to patent infringement proceedings. In explanation of Hohorst's case, it was said in In re Keasbey & Mattison Co., 160 U.S. 221, 230, 16 S. Ct. 273, 275, 40 L. Ed. 402, that 'It was a suit for infringement of a patent right, exclusive jurisdiction of which had been granted to the circuit courts of the United States * * *; and was therefore not affected by general provisions regulating the jurisdiction of the courts of the United States, concurrent with that of the several states.' Thereafter the lower federal courts for the most part took the position that the Act of 1887 as amended did not apply to suits for patent infringement and that infringers could be sued wherever they could be found.

"'The Act of 1897 was adopted to define the exact jurisdiction of the federal courts in actions to enforce patent rights, and thus eliminate the uncertainty produced by the conflicting decisions on the applicability of the Act of 1887, as amended, to such litigation. That purpose indicates that Congress did not intend the Act of 1897 to dovetail with the general provisions relating to the venue of civil suits, but rather that it

is intended to remain in force as an exception to the general,[2] without regard to the time of the enactment of such

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alone should control venue in patent infringement proceedings.

"Section 52 is derived from R.S. § 740, which in turn stems from the Act of May 4, 1858, c. 27, 11 Stat. 272, a general act intended to do away with the insertion of special provisions preserving state-wide venue in acts dividing a state into two or more judicial districts, and the Act of February 24, 1863, c. 54, § 9, 12 Stat. 662. Respondents insist that Section 52 applies to patent infringement suits because it antedates Section 48, excludes from its purview only suits of a local nature, and is consistent with and complementary to Section 48 since it deals with the problem of venue in the geographical sense rather than in terms of specified classes of litigation. We cannot agree.

"Even assuming that R.S. § 740 covered patent litigation prior to the Act of 1897, we do not think that its application survived that Act, which was intended to define the exact limits of venue in patent infringement suits. Furthermore, the Act of 1897 was a restrictive measure, limiting a prior, broader venue. General Electric Co. v. Marvel Rare Metals Co., 287 U.S. 430, 434-435, 53 S. Ct. 202, 204, 77 L. Ed. 408; Bowers v. Atlantic, G. & P. Co., C.C., 104 F. 887; Cheatham Electric Switching Device Co. v. Transit Development Co., C.C., 191 F. 727. Thus there is little reason to assume that Congress intended to authorize suits in districts other than those mentioned in that Act."

[2] Washington v. Miller, 235 U.S. 422, 35 S. Ct. 119, 59 L. Ed. 295; Rodgers v. United States, 185 U.S. 83, 22 S. Ct. 582, 46 L. Ed. 816; Town of Okemah, Okl. v. United States, 10 Cir., 140 F. 2d 963; Niagara Fire Ins. Co. of New York, N. Y. v. Raleigh Hardware Co., 4 Cir., 62 F. 2d 705; United States v. Mammoth Oil Co., 8 Cir., 14 F. 2d 705, affirmed 275 U.S. 13, 48 S. Ct. 1, 72 L. Ed. 137; Abbate v. United States, 9 Cir., 270 F. 735; Welden v. Clark, 20 Utah 382, 59 P. 524; University of Utah v. Richards, 20 Utah 457, 59 P. 96.

statutes[3] or the priority of enactment.[4] However, the rule is peculiarly applicable where the statutes are enacted at the same time or about the same time.[5]

(2, 3) It is a well settled rule of construction that where the entire legislation affecting a particular subject matter has undergone revision and consolidation by codification the revised sections will be presumed to bear the same meaning as the original sections.[6] This is true, even though in the course of revision or consolidation the language of the original sections has been changed. Ordinarily, the new language will be attributed to a desire to condense and simplify the text and to improve phraseology.[7] A legis-

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[3] Dallman v. Campbell, 56 Ohio App. 88, 10 N.E. 2d 38; State v. Preston, 103 Or. 631, 206 P. 304, 23 A.L.R. 414.

[4] United States v. Hess, 8 Cir., 71 F. 2d 78, denying rehearing 8 Cir., 70 F. 2d 142; Chilson v. Jerome, 102 Cal. App. 635, 283 P. 862; Utah Mining & Mfg. Co. v. Dickert & Myers Sulphur Co., 6 Utah 183, 21 P. 1002, 5 L.R.A. 259.

[5] Rodgers v. United States, 185 U.S. 83, 22 S. Ct. 582, 46 L. Ed. 816; University of Utah v. Richards, 20 Utah 457, 59 P. 96; Mayor and Alderman of Jersey City v. Hall, 79 N.J.L. 559, 76 A. 1058; State v. Hammond Packing Co., 110 La. 180, 34 So. 368; Abbate v. United States, 9 Cir., 270 F. 735; Nelden v. Clark, 20 Utah 382, 59 P. 524.

[6] Lewis v. Annie Creek Mining Co., 74 S. D. 26, 48 N.W. 2d 815; Miller Lumber Co. v. Federal Home Development Co., 231 Wis. 509, 286 N.W. 58, 122 A.L.R. 752; Guardian Agency, Inc. v. Guardian Mut. Sav. Bank, 227 Wis. 550, 279 N.W. 79, 115 A.L.R. 1356; Cf. In re Yonk's Estate, 115 Utah 292, 204 P. 2d 452.

[7] Lewis v. Annie Creek Mining Co., 74 S.D. 26, 48 N.W. 2d 815; Town of Forest Acres v. Seigler, 224 S.C. 166, 77 S.E. 2d 900; State ex rel. Rankin v. Wibaux County Bank, 85 Mont. 532, 281 P. 341, certiorari denied American Surety Co. of New York v. Mullendore, 281 U.S. 725, 50 S. Ct. 239, 74 L. Ed. 1142; United States & Canada Land Co. v. Sullivan, 113 Minn. 27, 128 N.W. 1112; Seminole Phosphate Co. v. Johnson, 188 N.C. 419, 124 S.E. 859; Bassett v. City Bank & Trust Co., 115 Conn. 393, 161 A. 852.

lative intent to change meaning will not be inferred unless such intent is clearly and indubitably manifested.[8]

The report of the Committee on the Judiciary of the Senate on H.R. 3214 "Revising, codifying, and enacting into law Title 28 of the United States Code, entitled 'Judicial Code and Judiciary' ",[9] in part reads as follows:

> "Many noncontroversial improvements have been effected which, while individually small in themselves, add up to a very substantial improvement in and modernization of the law relating to the Federal judiciary. At the same time great care has been exercised to make no changes in the existing law which would not meet with substantially unanimous approval.
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> "• • • Appended to the report are the revisers' notes to each section, together with accompanying tables. These explain in great detail the source of the law and the changes made in the course of the codification and revision."

The report of the Committee on the Judiciary of the House of "Revision of Title 28, U.S.C., 80th Congress, First Session, Report No. 308", states:

> "The reviser's notes are keyed to sections of the revision and explain in detail every change made in

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[8] McDonald v. Hovey, 110 U.S. 619, 4 S. Ct. 142, 28 L. Ed. 269; United States v. Ryder, 110 U.S. 729, 4 S. Ct. 196, 28 L. Ed. 308; Anderson v. Pacific Coast S.S. Co., 225 U.S. 187, 32 S. Ct. 626, 56 L. Ed. 1047; Gillam v. United States, 4 Cir., 27 F. 2d 296, certiorari denied 278 U.S. 635, 49 S. Ct. 32, 73 L. Ed. 552; Reaney v. Union County, 69 S.D. 392, 10 N.W. 2d 762, affirmed rehearing 69 S.D. 488, 12 N.W. 2d 14; Lewis v. Annie Creek Mining Co., 74 S.D. 26, 48 N.W. 2d 815; Bassett v. City Bank & Trust Co., 115 Conn. 393, 161 A. 852; Lindsay v. United States Savings & Loan Co., 127 Ala. 366, 28 So. 717, 51 L.R.A. 393; Cole v. Sloss-Sheffield Steel & Iron Co., 186 Ala. 192, 65 So. 177.

[9] 80th Congress, Second Session, Report No. 1559, Title 28 United States Code Congressional Service Special Pamphlet, p. 1675.

text. References to court decisions are supplied wherever necessary or appropriate."[10]

Mr. William W. Barron, Chief Reviser of Title 28 U. S. Code, Judiciary and Judicial Procedure, in his article on "The Judicial Code 1948 Revision", said:

> "There was no purpose on the part of the Revision staff to effect any change in existing law. Despite this, the process of comprehensively examining and rewriting the Code disclosed some grave disparities, inconsistencies and ambiguities not correctable by mere codification. This was due in part to forty years of piecemeal amendment to the 1911 Judicial Code. Some such problems had manifested themselves in difficult and not wholly satisfactory judicial interpretations. The Reviser and the Advisory Committee, upon discovering situations which would not yield to codification, felt in duty bound to apprise Congress of their findings and recommendations. Consequently, a few such changes, substantive in nature, were recommended to Congress. These were carefully outlined in the Reviser's Notes, and fully considered by the Judiciary Committees of both houses. * * *"[11]
>
> "Because of the necessity of consolidating, simplifying and clarifying numerous component statutory enactments no changes of law or policy will be presumed from changes of language in revision unless an intent to make such changes is clearly expressed.
>
> "Mere changes of phraseology indicate no intent to work a change of meaning but merely an effort to state in clear and simpler terms the original meaning of the statute revised.
>
> "Congress recognized this rule by including in its reports the complete Reviser's Notes to each section in which are noted all instances where change is intended and the reasons therefor."[12]

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[10] 80th Congress, First Session, Report No. 308, Title 28, United States Code Congressional Service, p. 1699.

[11] 8 F.R.D. 439, 441.

[12] 8 F.R.D. 439, 445.

The Reviser's Notes with respect to § 1400(b) read as follows:

> "Subsection (b) is based on said section 109 of title 28 [U.S.C., 1940 ed.], with the following changes:
>
> "Words 'civil action' were substituted for 'suit', and words 'in law or in equity', after 'shall have jurisdiction' were deleted, in view of Rule 2 of the Federal Rules of Civil Procedure.
>
> "Words in subsection (b) 'where the defendant resides' were substituted for 'of which the defendant is an inhabitant'. A corresponding change was made in subsection (a). Words 'inhabitant' and 'resident', as respects venue, are synonymous. (See reviser's note under section 1391 of this title.)
>
> "Words 'whether a person, partnership, or corporation' before 'has committed' were omitted as surplusage."

The Reviser's Notes clearly indicate a mere language change and negative any intent to effect a substantive change.

Pertinent provisions of the Reviser's Notes relative to § 1391 read as follows:

> "Section consolidates said section 111 [of title 28, U.S.C., 1940 ed.,] with part of said section 112 [of such title].
>
> . . . . . .
>
> "Word 'action' was substituted for 'suit' in view of rule 2 of the Federal Rules of Civil Procedure.
>
> "Word 'reside' was substituted for 'whereof he is an inhabitant' for clarity inasmuch as 'inhabitant' and 'resident' are synonymous. (See Ex parte Shaw, 1892, 145 U.S. 444, 12 S. Ct. 935, 36 L. Ed. 768; Standard Stoker Co., Inc. v. Lower, D.C. 1931, 46 F. 2d 678; Edgewater Realty Co. v. Tennessee Coal, Iron & Railroad Co., D.C. 1943, 49 F. Supp. 807.)"

They indicate no intent to make a substantive change.

The phrase in subsection (c) of § 1391, "in which it is incorporated or licensed to do business," merely writes

into the venue section the effect of the decision of the Supreme Court in Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 60 S. Ct. 153, 84 L. Ed. 167. The phrase in subsection (c), "or is doing business," extends the philosophy of that case to the act of doing business.

There is nothing in the Reviser's Notes to § 1391 indicating an intent to modify § 1400.

At the hearings before Subcommittee No. 1 of the House Judiciary Committee, Honorable Albert B. Maris, United States Circuit Judge for the Third Circuit, and a member of a committee of the Judicial Conference of the United States to collaborate with the Congressional committees in carrying forward the work of revising Title 28, in part stated: "Care has been taken to make no changes in the existing laws which would not meet with substantially unanimous approval."

At the hearings before such Subcommittee No. 1, James William Moore, Professor of Law at Yale University and a special consultant on the revision of Title 28, stated: "Venue provisions have not been altered by the revision."

An illustration of a plain statement of intention to make a substantive change, where such intention existed, is the Reviser's Notes to § 1398, wherein it is stated, "This section is completely rewritten to give effect to changes recommended by Judicial Council of the United States."[13]

The principle of waiver announced in Neirbo Co. v. Bethlehem Shipbuilding Corp., supra, prior to the 1948 revision, was repeatedly held to be inapplicable to patent infringement cases. See Blaw-Knox Co. v. Lederle, 6 Cir., 151 F. 2d 973; Bulldog Electric Products Co. v. Cole Electric Products Co., 2 Cir., 134 F. 2d 545 and Carbide & Carbon Chemicals Corp. v. United States Industrial Chemicals, Inc., 4 Cir., 140 F. 2d 47, wherein it was held

[13] Title 28, United States Code Congressional Service, p. 1850.

that 28 U.S.C.A. § 109 was the sole provision governing the venue of patent infringement litigation.

(4) The patent venue statute, as construed in Stonite Products Co. v. Melvin Lloyd Co., 315 U.S. 561, 62 S. Ct. 780, 86 L. Ed. 1026, reflected a sound policy of long standing. It was based on considerations of practicality and convenience in such litigation. A patent infringement action involves a peculiar combination of science or technology and law. In the ascertainment of the pertinent technical facts, it is important that the trial judge have first-hand visual and audible knowledge of the conditions, the environment and the art itself and the testimony of the most competent witnesses. Practicality and convenience are best served when the case is prosecuted where the alleged acts of infringement occurred and the defendant has a regular and established place of business.

An intention on the part of Congress to depart from that policy should not be lightly inferred.

We conclude that it was not intended that § 1400 should be modified or complemented by §.1391 (c); that § 1400 is the sole provision governing venue in patent cases; and that a corporate defendant may be sued only in a district of a state in which it is incorporated or a district wherein it has committed acts of infringement and has a regular and established place of business.

The conclusion we have reached is supported by a considerable body of judicial opinion.[14]

Affirmed.

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[14] Ackerman v. Hook, 3 Cir., 183 F. 2d 11; C-O-Two Fire Equipment Co. v. Barnes, 7 Cir., 194 F. 2d 410; Id., 344 U.S. 861, 73 S. Ct. 102, 97 L. Ed. 695; Fischer v. Karl, D.C.E.D.N.Y., 84 F. Supp. 53; Arkay Infants Wear, Inc., v. Kline's, Inc., D.C.W.D. Mo., 85 F. Supp. 98; Rava v. Westinghouse Electric Corp., D.C.S.D.N.Y., 90 F. Supp. 707; Curtis v. Madovoy, D.C. E.D.N.Y., 84 F. Supp. 637; Nachtman v. Jones & Laughlin Steel Corp., D.C.D.C., 90 F. Supp. 739; Gulf Research & Development

HUXMAN, Circuit Judge (dissenting).

While the question is not free from doubt and is somewhat shrouded in uncertainty, I find myself unable to agree with my Associates.

28 U.S.C.A. § 1400 (b)[1] governs the venue of patent infringement suits. Under this section as it was prior to the 1948 Judicial Code revision it was held without exception that the phrase "the judicial district where the defendant resides" had reference to the state of incorporation of a corporate defendant charged with patent infringement. The question is whether the provisions of 28 U.S.C.A. § 1391(c) of the 1948 revision of the Judicial Code, which in substance provides that the place of incorporation, the place in which a corporation is licensed to do business or the place in which it is doing business, shall be regarded as the place of residence of a corporation for venue purposes has application to corporations charged with patent infringement. One line of cases holds that revised Section 1391(c) has no impact on Section 1400(b) and that it stands unimpaired as before with respect to patent infringement suits, while another line of cases holds that the term "resides" in Section 1400(b) is for the first time legislatively defined by Section 1391(c).

Judicial construction should be employed only when there is ambiguity or vagueness in language used. It has no place in the law with respect to language which is clear, unambiguous and logically leads to only one result. Section 1391(c) is general in its application. It applies to corporations without exception. It seems clear to me that

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Co. v. Schlumberger Well Surveying Corp., D.C.S.D. Cal., 92 F. Supp. 16; Contra: see Guiberson Corp. v. Garrett Oil Tools, Inc., 5 Cir., 205 F. 2d 660, certiorari denied 346 U.S. 886, 74 S. Ct. 137, 98 L. Ed. 390, rehearing denied 346 U.S. 917, 74 S. Ct. 273, 98 L. Ed. 413; Dalton v. Shakespeare Co., 5 Cir., 196 F. 2d 469.

[1] This section is set out in the majority opinion and need not be repeated herein.

it states in clear language that action against corporations without exception may be brought in districts in which they are licensed to do business. The defendant corporation in this case was licensed to do business in the district in which it was sued in this action. But, argues the majority and the cases holding with them, since under the decisions of the courts it had been held that a suit could be brought only in a state of incorporation, the conclusion must be that had Congress intended to change this interpretation it would have so provided in specific language. It is just as logical and more convincing to me that had Congress intended to exempt patent infringement corporate defendants from the effect of the clear language of Section 1391(c), it would, as pointed out by Judge Hall in his opinion in Farr Co. v. Gratiot, D.C.S.D. Cal. 1950, 92 F. Supp. 320, 322, have provided " 'except in patent litigation.' "

When we seek support for our views in the legislative history of an act, it is not too difficult to find what we seek. It is pointed out that the revisor's notes are keyed to sections of the revision and point out each substantive change in the various sections. Reliance is placed on the fact that no reference is made to any substantive changes in Section 1400(b). But not all important changes were noted in the revisor's notes. Clearly an important change was made in Section 1391(c), yet the revisor's notes do not call attention to this change.

I can add nothing new to Judge Lindley's able dissenting opinion in C-O-Two Fire Equipment Co. v. Barnes, 7 Cir., 1952, 194 F. 2d 410, 415, or to the logic of Judge Hall's opinion in Farr Co. v. Gratiot, D.C.S.D. Cal. 1950, 92 F. Supp. 320, or to the opinion of the Fifth Circuit in Dalton v. Shakespeare Co., 196 F. 2d 469. Until the question is finally settled by the Supreme Court, I adhere to the views expressed in these cases and, therefore, respectfully dissent.